



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 07/11/00  
AGENDA ITEM 7  
WORK SESSION ITEM \_\_\_\_\_

TO: Mayor and City Council

FROM: Director of Public Works

**SUBJECT:** Addition to Well Standards Ordinance and Agreement with Alameda County Water District Regarding Oliver East Property

**RECOMMENDATION:**

It is recommended that the City Council: A) introduce the attached ordinance revising the Hayward Municipal Code to add the Oliver East property to the Well Standard Ordinance; and B) approve the attached resolution authorizing the City Manager to execute an agreement with Alameda County Water District regarding hazardous materials responsibilities and the collection of well charges.

**BACKGROUND:**

On April 22, 1999, the Board of Directors of Alameda County Water District (District) approved detachment of the Oliver East property from the District subject to certain conditions. This action was taken by the Board to accommodate annexation of the Oliver East property by the City of Hayward. The Local Area Formation Commission (LAFCo) subsequently approved the annexation provided that the conditions set forth by Alameda County Water District were met. Among the conditions of approval for this detachment is a requirement that the City impose charges, on behalf of the District, for construction and operation of wells on the detached property because, although the Oliver East property is outside of the District's service area, it does lie over a groundwater basin that is a District water source. A second requirement was for the City to enter into an agreement with the District regarding hazardous spills or tank leaks within the detached area.

The purpose of the proposed ordinance revision is to add the Oliver East property to the existing Well Water Replenishment Charges Section of the Well Standards Ordinance, which was adopted in 1976, and to provide the City with authority to collect, for the benefit of the District, all of the fees and charges related to construction and operation of wells on the Oliver East property.

## DISCUSSION:

The District has identified the fees and charges that they require the City to impose for construction and operation of wells on the Oliver East Property. It should be noted that presently the owners of the Oliver East property pay an Alameda County Water District Property tax. After detachment, this tax is no longer applicable, and only that area served by an existing or new well would have any fee or charge applied to it. The City currently has authority to collect the connection and user fees, as described briefly below, for construction and operation of wells on other detached properties.

A. Well Connection Fee – This is a one-time fee equivalent to the taxes that the District would have received on the parcel, for the number of years since detachment up to a maximum of ten years, had the parcel not been detached.

B. Well Users' Charges in the form of:

1. Well Water Replenishment Assessment (also known as a pump tax) – This is an ongoing charge for the production of groundwater and continues as long as the well is in operation, unless the wells are used for municipal recreation or agriculture.
2. Alameda County Water District Property Tax – This is a continuing charge equivalent to the property tax that the District would receive on the parcel had it not been detached. This charge continues until a well is abandoned and sealed,

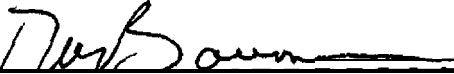
The connection and user charges described above have been authorized in the Hayward Municipal Code since 1976 and apply to all parcels that have been detached from Alameda County Water District. In addition to these charges, the District has adopted a Facilities Acreage Charge, which would be applied to any wells constructed on the Oliver East property. This one-time fee, currently \$1,250 per acre of area served by the well, is assessed for construction of all new non-District-owned wells within the District's groundwater basin, and provides a source of funding for new water resources facilities that benefit groundwater users.

In addition to authorizing imposition of charges, the revised ordinance also includes language to provide for the assessment of the charges as part of the conditions of approval for a tentative map or subdivision, if applicable. The ordinance will also reflect the District's requirement that District approval be secured prior to the construction of any well in the Oliver East area.

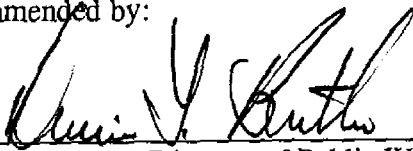
The agreement regarding hazardous materials handling issues within the Oliver East area has been developed by the Hayward Fire Department in conjunction with Alameda County Water District staff. The agreement provides the District with an opportunity to participate in the technical oversight and review of cleanup plans in the event of hazardous materials spills or tank leaks within the detached area. The City is a Certified Unified Program Agency (CUPA). The CUPA designation enables the City to administer hazardous materials and waste program within the City boundaries, including investigation of hazardous materials spills and leaks.

The District's participation in such investigations will be in accordance with all CUPA requirements.

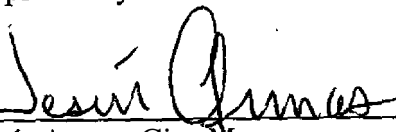
Prepared by:

  
Robert A. Bauman, Deputy Director of Public Works

Recommended by:

  
Dennis L. Butler, Director of Public Works

Approved by:

  
Jesús Armas, City Manager

Attachments: Exhibit A: Draft ACWD Agreement

# DRAFT

## AGREEMENT BETWEEN THE CITY OF HAYWARD AND THE ALAMEDA COUNTY WATER DISTRICT

THIS AGREEMENT is made as of the \_\_ day of \_\_\_\_\_, 2000, by and between the CITY OF HAYWARD (“City”) and the ALAMEDA COUNTY WATER DISTRICT (“Water District”).

This Agreement is entered into in light of the following facts and circumstances:

1. The City adopted Resolution No. 98-216 on December 15, 1998, authorizing the filing of an application with the Local Agency Formation Commission (LAFCO) requesting detachment of the Oliver East property (as shown on Exhibit A attached hereto) from the Water District and its annexation to the City.

2. The Water District adopted Resolution No. 99-034 on April 22, 1999, authorizing and directing the General Manager to communicate to LAFCO that the Water District does not object to the detachment, provided that LAFCO makes the detachment and annexation to the City subject to the City adopting ordinances implementing fees and conditions related to well construction, operation, and destruction, and the City entering into an agreement with the Water District by which it agrees to enforce such ordinances and to implement a cooperative program for the oversight of hazardous materials spills and tank leak cases.

3. LAFCO adopted Resolution No. 99-08 on May 13, 1999, approving the detachment of the Oliver East property from the Water District and its annexation to the City subject to the terms and conditions set forth in the Water District’s Resolution No. 99-034.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.       OVERSIGHT PROGRAM PROCEDURES

The City shall work cooperatively with the Water District to ensure the protection of groundwater. If contamination is discovered in areas previously detached or detached in the future, then the City shall notify, consult, and work cooperatively with the Water District in managing the investigation and cleanup. If agreeable to both parties, the City may allow the Water District to provide technical oversight of individual contamination cases which threaten or affect water quality.

2.       ENFORCEMENT OF ORDINANCES

City, as required by LAFCO Resolution No. 99-08 and Water District Resolution No. 99-034, has, by Ordinance No. 00-\_\_\_\_\_, amended ~~the~~ provisions of the Hayward Municipal Code pertaining to fees and development conditions on wells constructed, operated or destroyed within the Oliver East property, thereby agreeing to continue the Water District fees, taxes and charges referenced in such resolutions.

The Water District believes that the taxes, fees and charges described in the amendments are either exempt from or meet the requirements of Proposition 2 18 that added Articles XIIC and XIID to the state constitution. In the event that any of those taxes, fees or charges are challenged in any legal proceeding on the basis that the Water District has failed to comply with the requirements of Proposition 2 18, the Water District agrees to defend, indemnify and hold harmless the City, its employees, agents and elected officials.

The City agrees to defend, indemnify and hold harmless the Water District, its employees, agents and elected officials from costs and expenses resulting from the sole negligence of the City in collecting the taxes, fees and charges described in the amendments. The City also agrees not to itself challenge such taxes, fees or charges, nor to refuse or delay payment of them, on any well which is, or may be in the future, located on land owned by the City within the Oliver East property.

3.       TERM

The term of this Agreement shall be indefinite.

4. NOTICE

Any notice required under this Agreement shall be in writing and shall be given by personal delivery, fax, or deposit in the U.S. mail addressed as follows:

Hayward

City of Hayward  
777 B Street  
Hayward, CA 94541-5007  
Attn: Public Works Director and Fire Chief

Water District

Alameda County Water District  
43885 South Grimmer Boulevard  
P.O. Box 5110  
Fremont, CA 94537-5110  
Attention: General Manager

5. ACTIVITIES ARE DISCRETIONARY

The activities contemplated herein to be taken by the City and the Water District are discretionary in that they involve the exercise of **judgement** and discretion, rather than merely ministerial.

6. AMENDMENTS

This Agreement may be amended only by writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written by their respective duly authorized officers.

CITY OF HAYWARD

Approved by City Council  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_

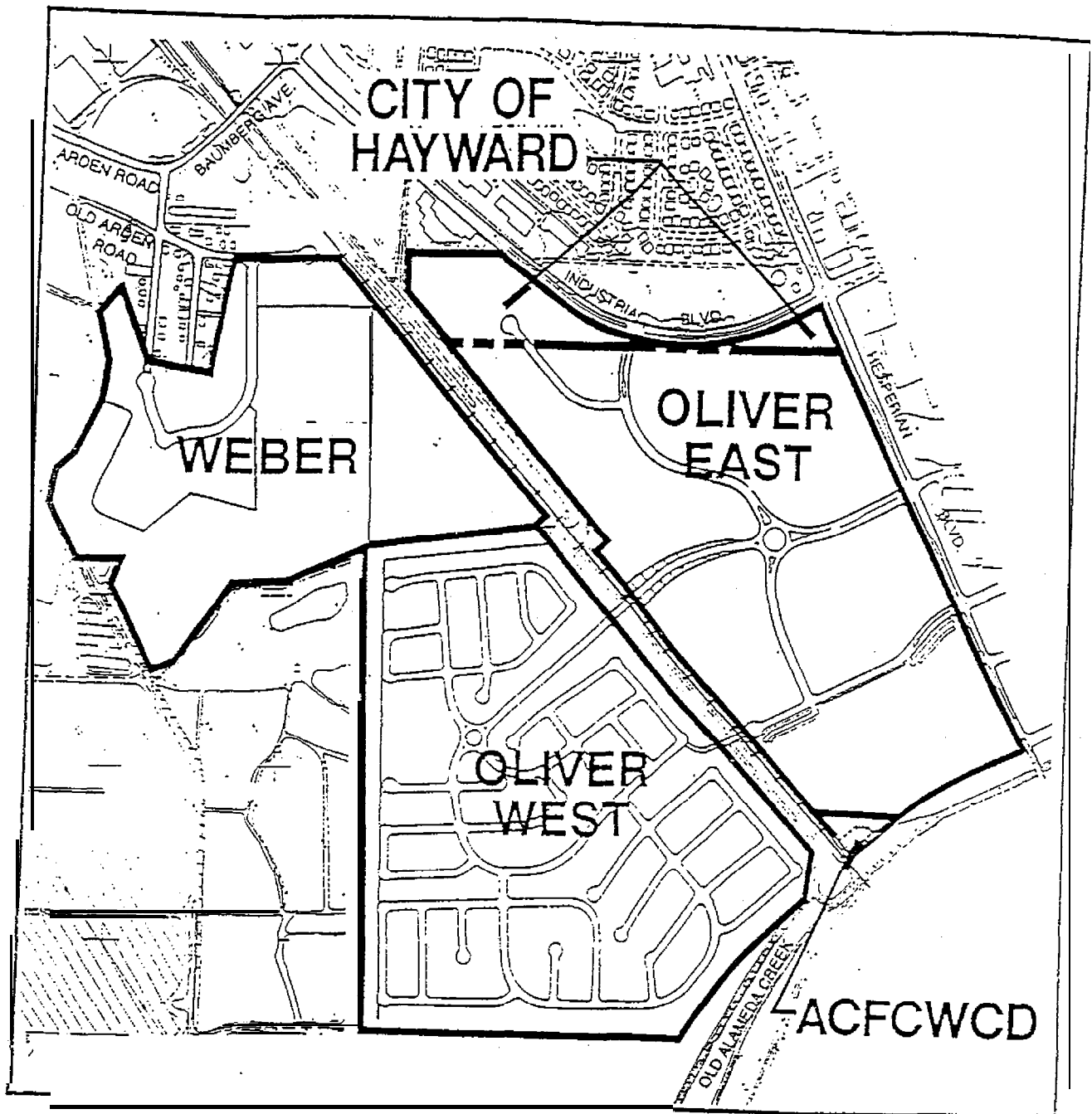
Jesús Armas  
City Manager

ALAMEDA COUNTY WATER DISTRICT

Approved by District  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_

Paul Piraino  
General Manager



## SITE MAP

EXHIBIT A

**DRAFT** 

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF HAYWARD AMENDING CHAPTER 5 ARTICLE 4 OF  
THE HAYWARD MUNICIPAL CODE RELATING TO WELL  
STANDARDS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section One: The title of Section 5-4.52 of the Hayward Municipal Code is hereby amended to read:

“SEC. 5-4.52 WELL WATER REPLENISHMENT CHARGES  
APPLICABLE TO THE AREA DETACHED IN 1973.”

Section Two: Section 5-4.53 is hereby added to the Hayward Municipal Code to read:

“SEC. 5-4.53 WELL WATER REPLENISHMENT CHARGES APPLICABLE  
TO THE AREA DETACHED IN 2000. Pursuant to the **conditions** imposed by LAFCO’s resolutions 99-09 and 99-034 approving the detachment of the “Oliver East” property (hereafter described in Appendix “A”), and after the detachment of the Oliver East property from the Alameda County Water District (“District”), the City of Hayward shall impose the following charges for the benefit of the District upon any owner of land within the detached area whenever a well is constructed or operated by any person or organization except on agency of the United States, the State of California, a municipal corporation, or other local government agency:

- (a) Well Connection Fee. At the time a well is constructed or placed in operation, a Well Connection Fee equivalent to the taxes that would have been received by the District from the parcel of land on which said well is constructed or operated if the land had not been detached. The Well Connection Fee may be imposed up to a maximum of ten (10) years.
- (b) Facilities Acreage Charge. A Facilities Acreage Charge based on the area served by the well in an amount equivalent to that which would be applicable to a similar well located within the District.
- (c) Well User’s Charge. The City shall continue to impose, subject to compliance with applicable provisions of law, a Well User’s Charge equivalent to both of the following:



- (i) Any replenishment assessment (commonly known as a pump tax) in the same amount as the assessment imposed by the District on wells located within the District's boundaries at the rate for uses other than municipal recreation or agriculture. This charge shall apply to all wells, including those constructed and operated by a governmental agency and shall continue as long as such wells are being operated; and
- (ii) The District property tax which would have been applicable to such parcel of land on which the operating well is located if such land had remained within the District's jurisdiction. This charge shall continue until such time as the well is abandoned or sealed."

Section 3: Section **5-4.54** is hereby added to the Hayward Municipal Code to read as follows:

"SEC. 5-4.54 CONSTRUCTION OR OPERATION OF NEW WELLS. No new well shall be constructed, operated, or abandoned within any detached area without the prior approval of the District. Subsequent to the adoption of this section, all tentative maps and/or subdivisions approved for property located in the detached area shall contain a condition that requires prior approval of the District before constructing or operating a well in the detached area.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of \_\_\_\_\_, 2000, by Council member \_\_\_\_\_

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_, 2000, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

## **APPENDIX A TO HAYWARD MUNICIPAL CODE CHAPTER 5-4: DESCRIPTION OF “OLIVER EAST” AREA DETACHED IN 2000**

The following real property located within the City of Hayward, County of Alameda, State of California, formerly lying within the boundaries of the Alameda County Water District as said boundaries were established by the Board of Supervisors of Alameda County by Resolution No. H-i 0788, adopted November 25, 1913, and filed in Minute Book 43 at page 262, is the area known as the “Oliver East” property, detached from the Alameda County Water District in 2000. Such area is more particularly described as follows:

### **OLIVER EAST PROPERTY**

All that certain real property situate in Eden Township, in the unincorporated area of Alameda County, California, described as **follows**:

Beginning at an angle point in the General Southern Boundary line of the territory annexed to the City of Hayward by Ordinance No. 127 C.S., the Map of which was filed for record on January **15**, 1958 in Book 40 of Maps at page **17A**, Official Records of Alameda County, California, said point of beginning being at the Westerly terminus of a line shown as having a length of **2,536.05** feet, and said point of beginning also being the intersection of the Westerly prolongation of the Southern boundary line of Parcel Map 6191, which was filed for record on July 2, 1992 in Book 202 of Parcel Maps at Pages 3 through 6, Official Records of Alameda County, with the Northeasterly right-of-way line of the lands of the Southern Pacific Transportation Company (formerly Southern Pacific Railroad, and also formerly South Pacific Coast Railroad); thence Southeasterly along said Northeasterly line, being also along the Northeasterly line of the territory annexed to the City of Hayward by Ordinance 140 C.S., the Map of which was filed for record on April 14, 1958 in Book 40 of Maps at Page 23A to the General Northern boundary line of the City of Union City, as established at the time of incorporation by Alameda County Board of Supervisors Resolution No.89527, Adopted on January 19, 1959; thence Easterly and Northeasterly along said General Northern boundary line, to the Northeastern right-of-way line of Hesperian Boulevard, (66.00 feet wide), also known as County Road **No.90**, also being the General Westerly boundary line of the territory detached from the City of Union City and annexed to the City of Hayward by Resolution **No.69-025 C .S.**, a Map of which was filed for record on February 24, 1969 in Book 60 of Maps at Page 10, Official Records of Alameda County, California; thence Northeasterly along said General Westerly boundary line, to the Southwesterly corner of the territory annexed to the City of Hayward by Ordinance No. 152 C.S. , a Map of which was filed for record on June 13, 1958 in Book 40 of Maps at Page 30A,

Official Records of Alameda County, California; thence continuing along said Northeasterly right-of-way line of Hesperian Boulevard also being along the General Westerly line of said annexed territory (Ord. No.152 C.S.) To the Easterly prolongation of the Southern boundary line of said territory annexed to the City of Hayward by Ordinance 127 C.S., also being the Easterly prolongation of the Southern boundary line of Parcel Map No. 6 19 1, which was filed for record on July 21, 1992 in Book 202 of Maps at Pages 3 through 6, Official Records of Alameda County, California; thence Westerly along said prolongations, and along said Southern Boundary lines to the point of beginning.

Containing 119 acres, more or less.

**DRAFT**



HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN AGREEMENT BETWEEN THE CITY  
OF HAYWARD AND THE ALAMEDA COUNTY  
WATER DISTRICT FOR THE OLIVER EAST PROPERTY

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute on behalf of the City of Hayward an agreement with the Alameda County Water District regarding hazardous **materials** responsibilities and collection of well charges, in a form to be approved by the City Attorney.

INCOUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward